

EXHIBIT F

Transcript of Proceedings

1 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 14 HON. TERRY GREEN, JUDGE
4

5 INTUIT INC. AND)
6 INTUIT CONSUMER GROUP, LLC,)
7)
8 PLAINTIFF(S),) CASE NO. 20STCV22761
9 9,933 INDIVIDUALS,)
10)
11 DEFENDANT(S).)
12 _____)
13

14 REPORTER'S TRANSCRIPT OF PROCEEDINGS
15
16 OCTOBER 8, 2020
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18 (VIA LA COURT CONNECT)
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APPEARANCES OF COUNSEL ON FOLLOWING PAGE

REPORTED BY:
LISA A. AUGUSTINE, RPR, CSR #10419
OFFICIAL COURT REPORTER PRO TEMPORE
JOB NO. 10073375

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1 APPEARANCE OF COUNSEL

2

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4 INTUIT CONSUMER GROUP LLC:

5

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Transcript of Proceedings

1 APPEARANCES CONTINUED

2

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1 I N D E X

2 OCTOBER 8, 2020

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4 CHRONOLOGICAL INDEX OF WITNESSES

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9 EXHIBITS

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Transcript of Proceedings

1 CASE NUMBER: 20STCV22761
2 CASE NAME: INTUIT VS. 9,933 INDIVIDUALS
3 LOS ANGELES, CALIFORNIA - THURSDAY, OCTOBER 8, 2020
4 DEPT. 14 HON. TERRY GREEN, JUDGE
5 APPEARANCES: (AS HERETOFORE NOTED.)
6 REPORTER: LISA A. AUGUSTINE, CSR. NO. 10419
7 TIME: 8:45 A.M.

8 -----000---

9 THE COURT: OKAY. SO NOW WE HAVE THE INTUIT
10 MATTER.

11 SOME OF YOU ARE OUT THERE IN TV LAND. HOW
12 YOU DOING?

13 OKAY. LET'S HAVE THE COURT REPORTER MAKE
14 HIS OR HER APPEARANCE FIRST, THEN WE'LL HAVE COUNSEL STATE
15 THEIR APPEARANCE.

16 COURT REPORTER, STATE YOUR APPEARANCE,
17 PLEASE.

18 MS. REPORTER: GOOD MORNING, YOUR HONOR. LISA
19 AUGUSTINE COURT REPORTER.

20 THE COURT: WELCOME. THANK YOU FOR BEING HERE.

21 OKAY. AND NOW, COUNSEL, PLEASE STATE YOUR
22 APPEARANCES.

23 MR. BENEDETTO: GOOD MORNING, YOUR HONOR. MATTHEW
24 BENEDETTO, WILMER & HALE ON BEHALF OF INTUIT.

25 MR. COLE: GOOD MORNING, YOUR HONOR. ROGER COLE,
26 OF FENWICK & WEST ALSO FOR INTUIT.

27 MR. PAIKIN: GOOD MORNING, YOUR HONOR. JONATHAN
28 PAIKIN ALSO FOR INTUIT.

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1 MR. LAMB: GOOD MORNING, YOUR HONOR. THIS IS
2 KEVIN LAMB ALSO FOR INTUIT.

3 MS. MELCHER: GOOD MORNING, YOUR HONOR. THIS IS
4 MOLLY MELCHER FROM FENWICK & WEST ALSO COUNSEL FOR INTUIT.

5 MR. CHAPIN: GOOD MORNING, YOUR HONOR. BENJAMIN
6 CHAPIN, WILMER HALE, ON BEHALF OF INTUIT.

7 MR. GRINGER: GOOD MORNING, YOUR HONOR. DAVID
8 GRINGER ALSO WITH WILMER HALE, ALSO ON BEHALF OF INTUIT.

9 THE COURT: WE HAVE 9,933 ON THE DEFENDANTS.

10 MR. POSTMAN: GOOD MORNING, YOUR HONOR. WARREN
11 POSTMAN OF KELLER LENKNER FOR DEFENDANTS. AND I BELIEVE
12 I'M JOINED BY ASHLEY KELLER, BEN WHITING AND SEAN DUDDY,
13 ALSO KELLER LENKNER, ALSO FOR DEFENDANTS.

14 THE COURT: OKAY. WELCOME. YOU GUYS CAN PRETTY
15 MUCH FIELD TWO FOOTBALL TEAMS OVER HERE WITH ALL THE
16 COUNSEL APPEARING. ALL RIGHT. THIS IS AN INTERESTING
17 CASE. AS TO THE PRO HAC VICE THIS IS USUALLY PROFORMA,
18 BUT BEFORE I CAN SAY "YES" I'M SURE I WILL SAY "YES," AND
19 I DON'T KNOW, AFTER I HEAR THIS, WHETHER YOU -- NEVER
20 MIND.

21 UNDER RULE 940 SERVE THE APPLICATION ON THE
22 STATE BAR AND PAY 50 BUCKS. I'M SURE YOU GUYS WILL DO
23 THAT. BUT AS SOON AS YOU DO THAT I'LL GRANT THESE
24 MOTIONS.

25 ALL RIGHT. LET'S TALK ABOUT THIS. SO I
26 DON'T KNOW HOW MANY CLAIMANTS ARE OUT THERE WHO ARE ANGRY
27 WITH INTUIT THAT FEEL THAT THEY WERE STEERED INTO PAYING A
28 NOMINAL SUM FOR WHAT THEY COULD HAVE HAD FOR FREE, BUT I

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1 PLEASURE READING YOUR PAPERS AND WORKING WITH SUCH GREAT
2 LAWYERS, BUT THE POINT IS THAT THEY -- YOUR CLIENT WROTE
3 THIS, AND NO DOUBT PAID OUTSTANDING COUNSEL TO WRITE IT
4 EXACTLY THE WAY THEY WANT IT. AND SO -- BUT THE LANGUAGE
5 IS VERY CLEAR. AND YOU SAY THAT JUST THE NOTICE
6 PROVISION -- WELL, ACTUALLY, YOU KNOW, I DO THIS ALL THE
7 TIME AND I'M CONSTANTLY READING ARBITRATION AGREEMENTS
8 FROM BIG CORPORATIONS WHO HIRE THE BEST LAW FIRMS, AND THE
9 AGREEMENT USUALLY STATES, OR IS VERY CLEAR ABOUT THE FACT
10 THAT BOTH PARTIES HAVE THIS REMEDY, OR ONE PARTY HAS THAT
11 REMEDY, OR NEITHER PARTY HAS THIS REMEDY. IT'S VERY
12 CLEARLY SPELLED OUT IN THE VAST MAJORITY OF CONTRACTS THAT
13 I HAVE READ. IT IS NOT UNUSUAL TO READ THIS EXCEPT THAT
14 YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT. AND YOU SAY
15 IT'S A NOTICE PROVISION AS IF IT WERE SUBROGATED IN ITS
16 OWN PARAGRAPH OR ITS OWN PAGE UNDER A NEON LIGHT THAT
17 SAYS, BLINKING LIGHT, THAT SAID NOTICE, NOTICE, NOTICE.
18 IT IS PART OF THE CONTRACT. AND I HAVE TO ASSUME THAT
19 THIS IS WHAT YOUR CLIENT WANTED, AND PUT THIS LANGUAGE IN
20 THERE FOR A REASON.

21 AND I GATHER FROM READING THE BRIEFS THAT
22 LANGUAGE HAS BEEN MODIFIED NOW TO READ LIKE VIRTUALLY
23 EVERY OTHER CONTRACT I'VE SEEN THAT WANTS BOTH PARTIES TO
24 HAVE THE SAME RIGHT TO SAY THAT.

25 SO, YOU KNOW, I TAKE THIS AT FACE VALUE.
26 AND I DON'T THINK IT'S THAT UNUSUAL AS GIVING THE CONSUMER
27 A WAY OUT OF GOING TO A PROCEEDING WHICH IS GOING TO BE
28 EXPENSIVE FOR YOUR CLIENT.

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1 SO I DON'T SEE IT AS BEING A VIOLATION OF
2 ANY DUE PROCESS RIGHT. AND -- BUT EITHER WE'RE GOING TO
3 BE MODIFYING -- EITHER WE'RE GOING TO USE ONE (INAUDIBLE)
4 TO MODIFY THE RULES AND ALLOW YOU IN COURT IN THE FIRST
5 PLACE BY SAYING THAT THE SAME PARAGRAPH, I BELIEVE, SAYS,
6 YEAH, NOTWITHSTANDING ANYTHING TO THE CONTRARY, ANY
7 PARTY -- ANY PARTY TO THE ARBITRATION -- NOT JUST YOU --
8 BUT ANY PARTY TO THE ARBITRATION CAN SEEK INJUNCTIVE OR
9 OTHER FORMS OF EQUITABLE RELIEF.

10 SO IF I WANT TO TAKE THAT PARAGRAPH AND
11 MODIFY THE RULES TO GET YOU INTO SUPERIOR COURT, AS
12 OPPOSED TO IN FRONT OF THE ARBITRATOR, THEN I HAVE -- I
13 CAN'T BLEW COUNSEL'S PREVIOUS SENTENCE. SO I HAVE TO GO
14 BACK AND TAKE THE PREVIOUS SENTENCE AND SAY, WELL, WHAT
15 DOES THAT DO? WHAT DOES THAT DO TO RULE 9? CLEARLY IT
16 MODIFIES RULE 9. THEY'RE NOT CONSISTENT. IT CLEARLY
17 MODIFIES IT.

18 SO IT'S GOOD NEWS/BAD NEWS. THE GOOD NEWS
19 IS YOU'RE HERE UNDER ONE OF THE SENTENCES IN THAT
20 PARAGRAPH, AND THE BAD NEWS IS YOU'RE BACK TO ARBITRATION
21 UNDER ANOTHER SENTENCE IN THAT PARAGRAPH.

22 AND AS FAR AS VIOLATING DUE PROCESS, YOU
23 KNOW, I THINK, AS I RECALL FROM WHAT I WAS READING, THAT
24 THE AAA CAN REJECT AN ARBITRATION CONTRACT IF THEY FEEL IT
25 VIOLATES DUE PROCESS, AND OBVIOUSLY THEY DIDN'T BECAUSE
26 THEY TOOK THE -- THEY TOOK THE CASE AND THAT'S THEIR WAY
27 OF SAYING IT DOESN'T VIOLATE DUE PROCESS I GUESS, AND THEY
28 OBVIOUSLY DON'T THINK THAT MAKING THE ARBITRATOR -- OR

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1 HAVING THE INDIVIDUAL ARBITRATOR RULE ON THIS VIOLATES DUE
2 PROCESS, THAT'S WHAT THEY SAID TO DO.

3 SO I CERTAINLY HEAR WHERE YOU'RE COMING FROM
4 AND IT HAD REACHED A RESULT THAT WAS FULLY UNINTENDED WHEN
5 IT WAS DRAFTED, THAT DOESN'T NECESSARILY MEAN THAT YOU
6 THROW IT OUT.

7 AND I DON'T KNOW THAT IT'S NECESSARILY AN
8 ABSURD RESULT. IT'S JUST A NEGATIVE RESULT FOR YOUR
9 CLIENT BECAUSE, FRANKLY, THERE'S BEEN SOME -- LET'S GIVE
10 THE CONSUMERS -- KELLER FIRM, ISN'T IT? LET'S GIVE THEM,
11 YOU KNOW, A TOAST. GOOD WORK. IT'S GOOD WORK.

12 AS I SAID AT THE OUTSET, I ENJOY THIS AS AN
13 ART FORM AS WELL AS AN INTELLECTUAL EXERCISE AS WELL BEING
14 COMMITTED TO SAYING DUE PROCESS IS DONE, AND I JUST DON'T
15 SEE -- I SEE IT'S A BAD RESULT FOR YOUR CLIENT. I DON'T
16 KNOW THAT THAT TRANSLATES INTO VIOLATION OF DUE PROCESS.

17 WOULD YOU LIKE TO ANSWER THOSE BEFORE IT
18 GOES TO THE CONSUMERS?

19 MR. PAIKIN: YOUR HONOR, ALL THE CONSUMERS DO HAVE
20 NOTICE OF ALL OF THE RULES. THEY'RE IN THAT PARAGRAPH 4.
21 IT SPECIFIES AS WELL THAT THE ARBITRATION WOULD BE
22 CONDUCTED UNDER THE AAA RULES, WHICH IT GIVES THE WEBSITE
23 SO THAT PEOPLE CAN ACCESS THEM OR CALL AND GET THEM. AND
24 RULE 9B IS AS MUCH A PART OF THIS PARAGRAPH AS ANYTHING
25 ELSE.

26 AND THAT RULE, EVEN THOUGH IT DOESN'T APPEAR
27 IN THE ACTUAL TEST OF 14, IS PART AND PARCEL OF THE
28 CONTRACT, AND NEEDS TO BE READ IN CONJUNCTION WITH WHAT

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1 THE KELLER FIRM IS POINTING TO THE NOTICE PROVISION.

2 THE NOTWITHSTANDING LANGUAGE, THE 9TH
3 CIRCUIT AND JUDGE BREYER HAVE ALREADY EXPLAINED THAT THAT
4 MEANS THAT IT GIVES PERMISSION TO SEEK JUDICIAL
5 INTERVENTION IN AID OF THE ARBITRATION.

6 HONESTLY, YOU DON'T EVEN NEED THAT PROVISION
7 BECAUSE ANYTIME YOU HAVE A FIGHT OVER THE MANNER IN WHICH
8 ARBITRATION SHOULD PROCEED YOU CAN GO TO COURT AND HAVE
9 THE COURT TRY TO ADJUDICATE THE SHAPE OF THOSE TABLE
10 ISSUES. THAT'S WHAT THE SUPREME COURT CASE BOLT AND OTHER
11 CASES ARE ALL ABOUT.

12 AND SO INTUIT DID NOT, YOU KNOW, DRAFTED THE
13 CONTRACT AND AGREED TO USE THE AAA AS THE ADMINISTRATIVE
14 BODY ON THE UNDERSTANDING THAT IT WAS THOSE RULES THAT
15 WERE GOING TO APPLY, AND THAT THE DUE PROCESS PROTOCOLS
16 THAT ARE ALSO PART AND PARCEL OF THOSE RULES ARE ALSO
17 GOING TO APPLY.

18 IT NEVER WOULD HAVE AGREED TO A SITUATION
19 WHERE -- WHERE IT COULD BE HELD UP WITH NO SAFETY VALVE TO
20 HAVE TO PAY \$3,200 IN FEES FOR \$100 CLAIMS.

21 THE LAST PART I WANT TO MAKE, JUDGE, IS THE
22 9B ISSUE IS NOT THE ONLY CLAIM THAT'S AT ISSUE HERE.
23 THERE'S THE PREEMPTION QUESTION UNDER SB 707.

24 AND WHAT MAKES THIS SITUATION PARTICULARLY
25 MORE PRONOUNCED BECAUSE OF SB 707, IN THE NORMAL COURSE
26 BEFORE SB 707, AND THIS IS WHAT THE KELLER FIRM SUGGESTED
27 IN THEIR BRIEF, INTUIT COULD NOT -- COULD CHOOSE NOT TO
28 PAY THE FEES, THIS COULD BE PRESENTED ON A MOTION TO